

ment forbidding payments or allowances for an operating differential subsidy as provided in the Merchant Marine Act of 1936, as amended, on any vessel unless the owners or operators of such subsidized vessels shall have filed with the U.S. Maritime Commission a certificate setting forth certain information relative to employees on such vessels, was a proper limitation and in order. The amendment, it should be noted, required extensive certifications by nonfederal recipients, not required by existing law. No argument was advanced that the reporting requirements were tantamount to a change in existing law.

In conclusion, it should be remembered that, while some rulings may suggest that it is permissible to make the payment of funds contingent upon the performance of certain acts or obligations by private citizens or other persons not in the federal government's employ, recent rulings indicate that it is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by a state or local government official or agency which is not otherwise required by existing law.<sup>(9)</sup>

H.R. 2788, an independent offices appropriation bill.

9. See, for example, the ruling at 131 CONG. REC. —, 99th Cong. 1st

## § 54. Judging Qualifications of Recipients

### *Past Employment of Heads of Departments*

**§ 54.1 An amendment providing that no part of an appropriation shall be paid to the head of any executive department who, within a specified period was a partner in a firm which derived any income from representing a foreign government, was held to be a proper limitation on an appropriation bill and in order.**

On July 26, 1951,<sup>(10)</sup> the Committee of the Whole was considering H.R. 4740, a Departments of State, Justice, Commerce, and the Judiciary appropriation bill. The Clerk read as follows:

Amendment offered by Mr. (John) Phillips (of California): On page 58, following line 14, add a new section to be numbered section 602:

"None of the money appropriated in this act shall be paid to the head of any executive department who, within a period of 5 years preceding his appointment, was a partner in, or a

Sess., July 25, 1985, during proceedings relating to H.R. 3038 (HUD, independent agencies appropriations for fiscal 1986).

10. 97 CONG. REC. 8963, 8965, 82d Cong. 1st Sess.

member of, a professional firm which derived any part of its income from representing, or acting for, a foreign government, or who, acting as an individual, derived income from such representation.”. . .

The Chairman:<sup>(11)</sup>. . . The Chair is prepared to rule.

The gentleman from California has offered an amendment which has been reported by the Clerk. The gentleman from New York has made a point of order against the amendment on the ground that it is not a proper limitation on an appropriation bill.

The Chair has examined the amendment with some degree of care. . . .

It should be clear that almost any limitation must necessarily require some action on the part of somebody. One of the classic illustrations given on many occasions by the distinguished parliamentarian to whom the Chair made reference a few moments ago, Hon. James R. Mann, of Illinois, was that if a provision states that “no part of this appropriation shall be paid to a red-headed man,” somebody will have to find that red-headed man and determine whether his hair is red; therefore, it would appear that in any instance where a limitation is sought to be imposed there must be some activity contemplated or some effort exerted by someone to carry out the provisions of the limitation.

The Chair would invite attention to section 1593 of Cannon's Precedents, and reads the syllabus:

A provision that no part of an appropriation be used for payment of any employee not appointed through the civil service was held to be a lim-

itation and in order on an appropriation bill. . . .<sup>(12)</sup>

The Chair is of the opinion that that decision is applicable to the pending question raised by the point of order made by the gentleman from New York. It would appear that the over-all and controlling element of the pending amendment is a limitation on an appropriation bill. It is entirely negative in character, and does not affirmatively impose any additional duties upon anybody.

Therefore the Chair overrules the point of order.

### ***Qualification of Nonfederal Supplier of Goods or Services***

**§ 54.2 An amendment to a general appropriation bill providing that none of the funds therein shall be used to purchase goods or services from suppliers who compensate any of the officers or employees in excess of a certain rate was held a valid limitation on the use of funds in the bill which merely defined non-federal employer recipients who could not receive funds and did not affirmatively impose salary levels.**

12. For more recent precedents involving limitations on funds for salaries of certain employees as described in provisions of an appropriation bill or amendment, see, for example, §74, *infra*.

11. Jere Cooper (Tenn.).

On June 15, 1972,<sup>(13)</sup> during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15417), a point of order was raised against the following amendment:

MR. [ANDREW] JACOBS [Jr., of Indiana]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Jacobs: On page 40, after line 4, insert:

"Sec. 409. No part of the funds appropriated by this Act shall be used to purchase goods or services from a supplier which compensates any officer or employee at a rate in excess of level II of the Executive Schedule under section 5313 of title 5, United States Code."

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:<sup>(14)</sup> The gentleman will state his point of order.

MR. FLOOD: Mr. Chairman, again I am referring to Cannon's Procedure of the House of Representatives, and I am referring to pages 69 and 70, under the heading, "Construed as legislation and not limitations and therefore not admitted".

I go on to read:

Provision that no part of an appropriation should be used except in a certain way, thereby restricting executive discretion to the extent of imposing new duties.

Now, this is clearly what is being attempted in this amendment.

THE CHAIRMAN: Does the gentleman from Indiana desire to be heard on the point of order?

MR. JACOBS: Mr. Chairman, only to say that I think this is clearly a limitation on an appropriation bill, and there have been many occasions where appropriations cannot be used to make purchases with corporations where certain activities are carried on by the corporation.

I have nothing further to say.

THE CHAIRMAN: The Chair is ready to rule.

The Chair is aware of the precedent cited by the gentleman from Pennsylvania, but under the language as it is written in the amendment offered by the gentleman from Indiana it is a negative restriction, and therefore the Chair rules that the amendment is in order.

## § 55. President's Authority

### *Grant of New Discretionary Authority*

**§ 55.1 Language in a general appropriation bill which authorizes the President to determine amounts of funds to be available in the administration of a program, although such funds are required to be distributed by application of an allotment formula in existing law, confers on the President a dis-**

13. 118 CONG. REC. 21136, 92d Cong. 2d Sess.

14. Chet Holifield (Calif.).